

HELP US HELP YOU!

A+ APPLICATION & THE PERMITTING PROCESS

Courtney Stevens and Laura Boos

Regulatory Workshops

October 2016

*Trusted Partners Delivering Value Today
for a Better Tomorrow*





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OBJECTIVE

To provide an overview of the Corps' permitting process with a focus on Individual Permits (IPs).





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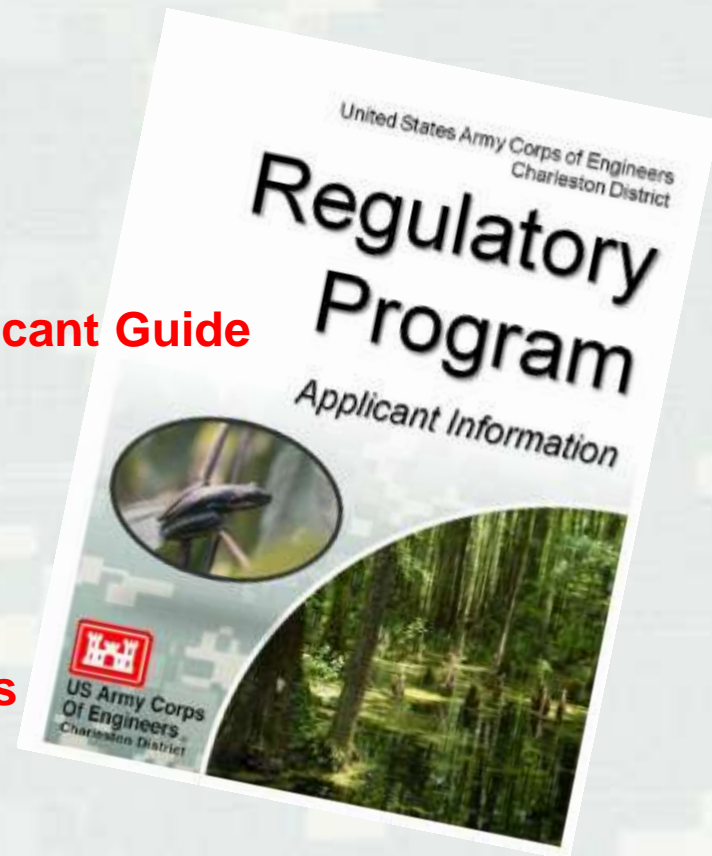
Helpful Resources for Applicants

<http://www.sac.usace.army.mil/Missions/Regulatory.aspx>



Applicant Guide

Interactive Modules





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WHAT IS AN IP?

- **Letters of Permission (LOP):** Abbreviated process. Used to authorize minor projects, with no significant environmental impacts and should encounter no appreciable opposition.
- **Standard Permits (SP):** Issued for projects that have more than a minimal impact on the environment. Pre-application meetings are highly encouraged.





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THE WHY AND THE HOW

Why?

- ▶ Comply with
 - National Environmental Policy Act (NEPA)
 - Section (404)(b)(1) of the Clean Water Act
 - Section 10 of the Rivers and Harbors Act

How?

- ▶ 33 CFR 325 – Processing of Department of the Army Permits





PRE-APPLICATION CONSULTATION 325.1(b) BUILDING STRONG

Brief
Potential Alternatives
Provide “helpful information”
Commensurate with Impacts



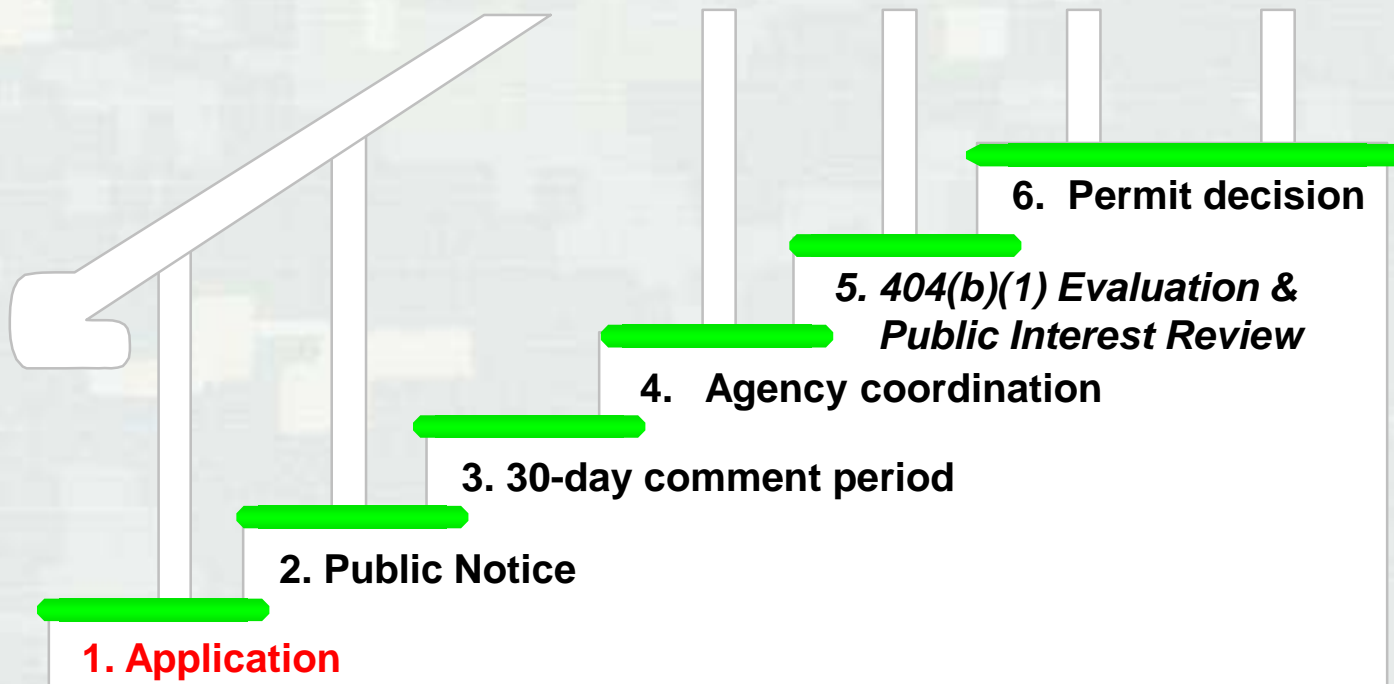
Interagency Meeting Requests:

<http://www.scdhec.gov/environment/WaterQuality/401Certification/Pre-ApplicationProcedures/>



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PROCESSING APPLICATION





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JOINT FEDERAL & STATE APPLICATION FORM

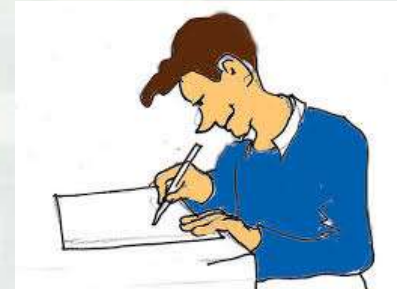
Joint Federal and State Application Form For Activities Affecting Waters of the United States On Critical Areas of the State of South Carolina		This Space for Official Use Only	
<small>Instructions: Fill out this form with 10 USC 401, 10 USC 402, 10 USC 403, 10 USC 404, 10 USC 405, 10 USC 406, 10 USC 407, 10 USC 408, 10 USC 409, 10 USC 410, 10 USC 411, 10 USC 412, 10 USC 413, 10 USC 414, 10 USC 415, 10 USC 416, 10 USC 417, 10 USC 418, 10 USC 419, 10 USC 420, 10 USC 421, 10 USC 422, 10 USC 423, 10 USC 424, 10 USC 425, 10 USC 426, 10 USC 427, 10 USC 428, 10 USC 429, 10 USC 430, 10 USC 431, 10 USC 432, 10 USC 433, 10 USC 434, 10 USC 435, 10 USC 436, 10 USC 437, 10 USC 438, 10 USC 439, 10 USC 440, 10 USC 441, 10 USC 442, 10 USC 443, 10 USC 444, 10 USC 445, 10 USC 446, 10 USC 447, 10 USC 448, 10 USC 449, 10 USC 450, 10 USC 451, 10 USC 452, 10 USC 453, 10 USC 454, 10 USC 455, 10 USC 456, 10 USC 457, 10 USC 458, 10 USC 459, 10 USC 460, 10 USC 461, 10 USC 462, 10 USC 463, 10 USC 464, 10 USC 465, 10 USC 466, 10 USC 467, 10 USC 468, 10 USC 469, 10 USC 470, 10 USC 471, 10 USC 472, 10 USC 473, 10 USC 474, 10 USC 475, 10 USC 476, 10 USC 477, 10 USC 478, 10 USC 479, 10 USC 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1. Applicant Last Name:			
2. Applicant First Name:			
3. Applicant Company Name:			
4. Applicant Mailing Address:			
5. Applicant City:			
6. Applicant State:		7. Applicant Zip:	
8. Applicant Area Code and Phone No.:			
9. Applicant Fax No.:			
10. Applicant E-mail:			
11. Applicant Last Name (agent is not required):			
12. Agent First Name:			
13. Agent Company Name:			
14. Agent Mailing Address:			
15. Agent City:			
16. Agent State:		17. Agent Zip:	
18. Agent Area Code and Phone No.:			
19. Agent Fax No.:			
20. Agent E-mail:			
21. Project Name:			
22. Project City:		23. Project State:	
24. Project County:		25. Project Zip Code:	
26. Harbort Waterbody:			
27. Tax Parcel ID:			
28. Property Line (acres):			
29. Latitude:			
30. Longitude:			
31. Discharges to Project Site (Include Street Number, Street Name, and Landmarks and attach additional sheet if necessary):			
32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheet if needed):			
33. Overall Project Purpose and the Basic Purpose of Each Activity in or Affecting U.S. Waters (attach additional sheet if needed):			
34. Type and quantity of Materials to Be Discharged		35. Type and Quantity of Impacts to U.S. Waters (including wetlands):	
Dirt or Gravel: _____ Clean Sand: _____ Mud: _____ Clay: _____ Gravel, Rock, or Stone: _____ Concrete: _____ Other (describe): _____ TOTAL: _____ cubic yards		Filling: _____ Backfill: A Building: _____ Leach-leaching: _____ Excavating: _____ Flushing: _____ Dredging/Excavation: _____ Shading: _____ TOTALS: _____ acres _____ sq ft _____ cubic yards	



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33 CFR 325.1 – CONTENT OF APPLICATION

- Complete Description
- Location
- Purpose and Need
- Scheduling of the Activity
- Names and Address of Adjoining Property Owners
- Location and Dimensions of Adjacent Structures
- Authorizations Required by Other Agencies
- Avoidance, Minimization and Mitigation Efforts
- Signature of Applicant





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Formal Name, if available. If not, identify by owner name and proposed activity.

MORE TO COME!

21. Project Name:		22. Project Street Address:	
23. Project City:	24. Project County:	25. Project Zip Code:	26. Nearest Waterbody:
27. Tax Parcel ID:		28. Property Size (acres):	
29. Latitude:		30. Longitude:	
31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):			
32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed)			
33. Overall Project Purpose and the Basic Purpose of Each Activity in or Affecting U.S. Waters (attach additional sheets if needed):			
34. Type and quantity of Materials to Be Discharged		35. Type and Quantity of Impacts to U.S. Waters (including wetlands).	
<div>Dirt or Topsoil: _____ <input type="checkbox"/> cubic yards</div> <div>Clean Sand: _____ <input type="checkbox"/> cubic yards</div> <div>Mud: _____ <input type="checkbox"/> cubic yards</div> <div>Clay: _____ <input type="checkbox"/> cubic yards</div> <div>Gravel, Rock, or Stone: _____ <input type="checkbox"/> cubic yards</div> <div>Concrete: _____ <input type="checkbox"/> cubic yards</div> <div>Other (describe): _____ <input type="checkbox"/> cubic yards</div> <div>TOTAL: _____ cubic yards</div>		<div>Filling: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Backfill & Bedding: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Landclearing: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Dredging: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Flooding: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Draining/Excavation: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>Shading: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq. ft. _____ <input type="checkbox"/> cubic yards</div> <div>TOTALS: _____ acres _____ sq. ft. _____ cubic yards</div>	

Provide Decimal Degrees (4 decimal places)

Be as detailed as possible!

Fully describe the project and what is planned.

Clear, concise description of the goals of the project.

Vital Information!

Should match what is provided in any narrative descriptions.

For linear projects (roads or utilities), attach a sheet that separately lists the coordinates of each crossing of a waterbody.



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**Complete!
Use
additional
sheets if
needed.**

**Should
match
project
drawings.**

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
Total Wetland Impacts (acres)				

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
Total Stream Impacts (Linear Feet)				

38. Have you commenced work on the project site? ☐ YES ☐ NO If yes, describe all work that has occurred and provide dates.

Describe if work occurred under previous authorization.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

Describe measures taken to avoid & minimize impacts.
Can include construction techniques & alternate site configurations.

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

**Provide Mitigation Plan and SOP
Calculation Worksheets.**

*Can provide documentation from Mitigation Bank that
credits have been set aside at that bank.*



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41. See the attached sheet to list the names and addresses of adjacent property owners.	See next slide
42. List all Corps Permit Authorizations and other Federal , State, or Local Certifications, Approvals, Denials received for work described in this application.	Provide any information on previous authorizations <i>Include file numbers– Very Important!!</i>
43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.	
<div style="text-align: right;">_____ Applicant's Signature Date</div>	
44. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.	
<div style="text-align: right;">_____ Applicant's Signature Date</div> <div style="text-align: right;">_____ Agent's Signature Date</div>	
¹ The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 11 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.	

Application MUST be signed by BOTH the applicant and the agent (if applicable).

Application is considered incomplete without appropriate signatures!



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**Provide
Labels if there
are more than
10 adjacent
property
owners.**

#41- Adjacent Property Owner Mailing List
(Attach additional sheets if necessary)

Applicant Name: _____

Project Name: _____

Property Owner Name	Mailing Address

*Must also
provide a **MAP**
showing the
location of each
adjacent
property owner
listed.*



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PROJECT LOCATION

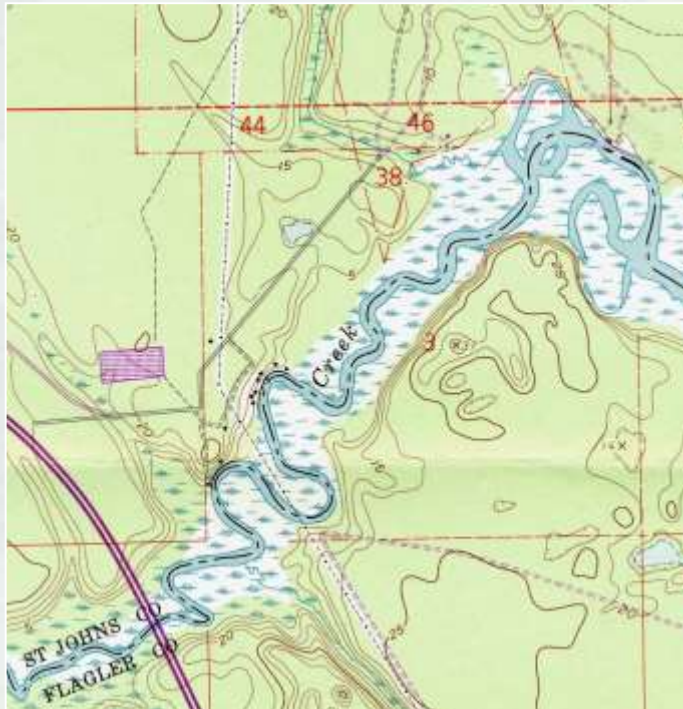


Google Earth Imagery



CIR aerial photography

PROJECT LOCATION



USGS topographic maps



NWI maps

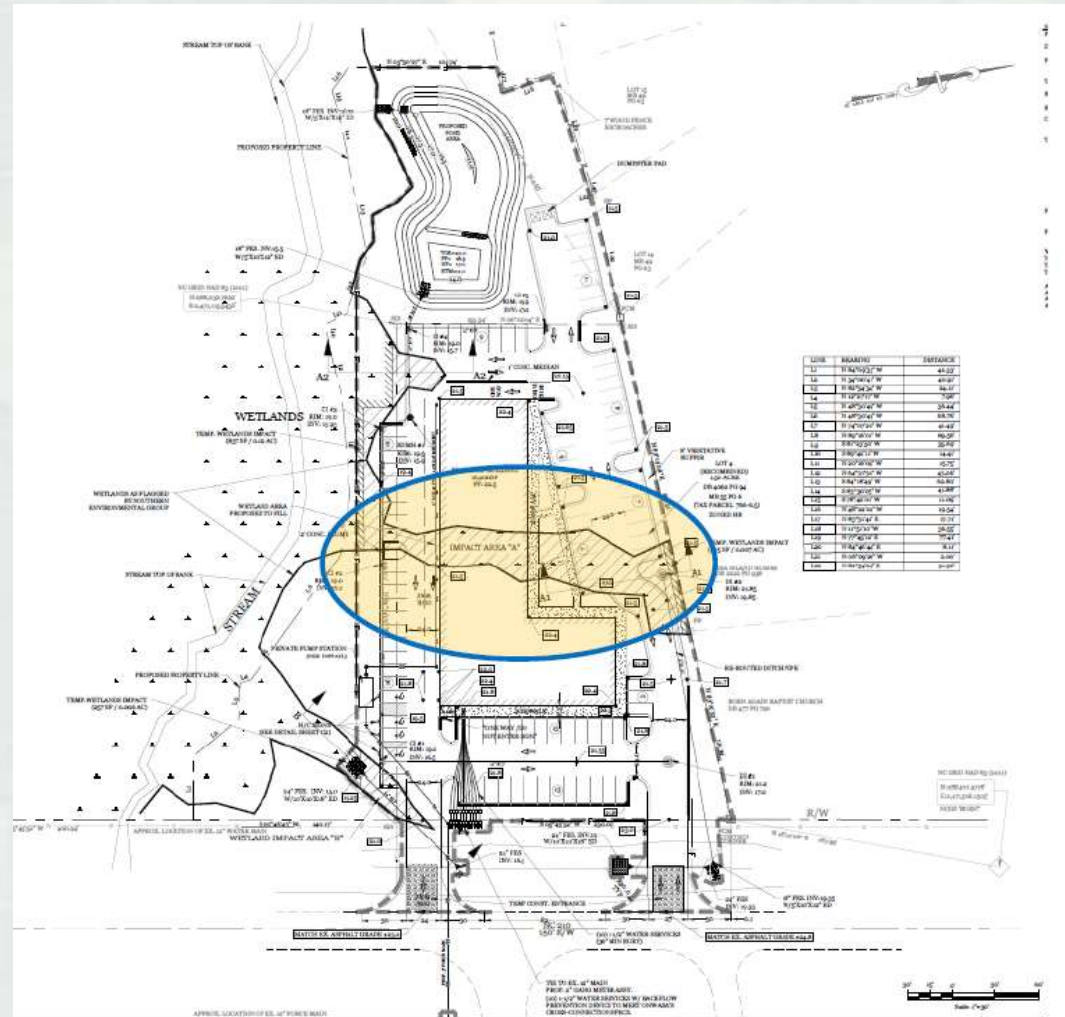




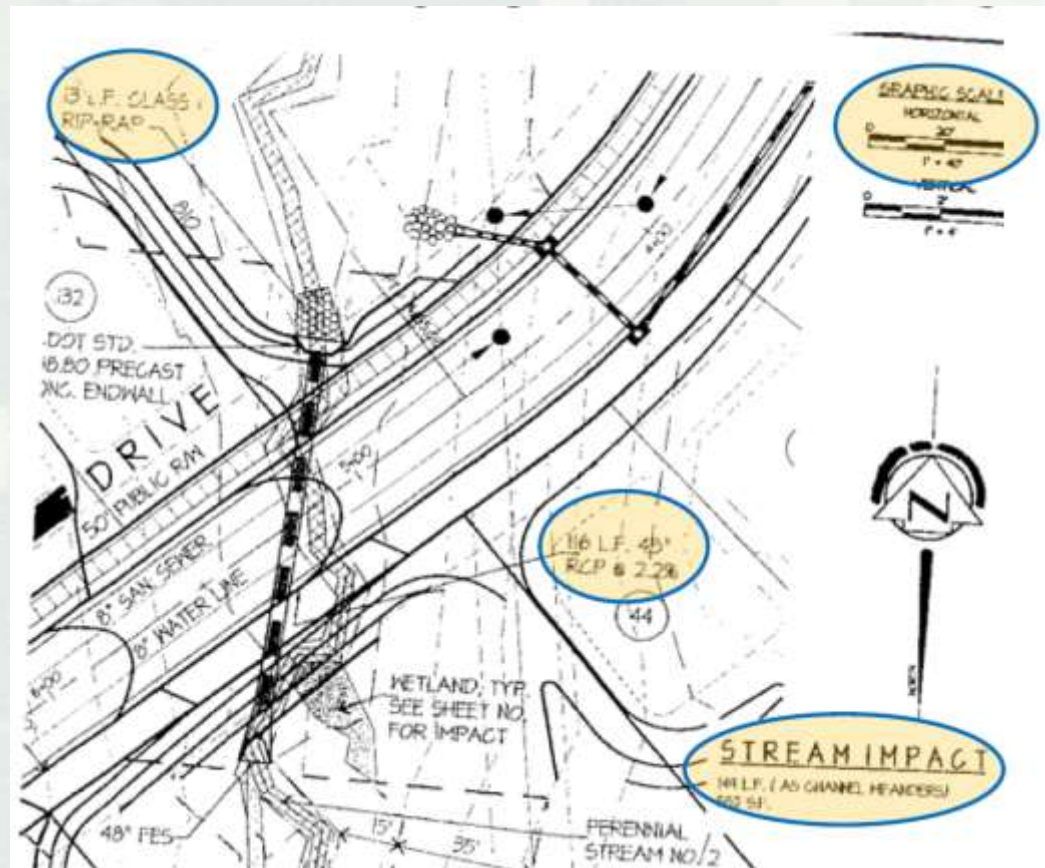


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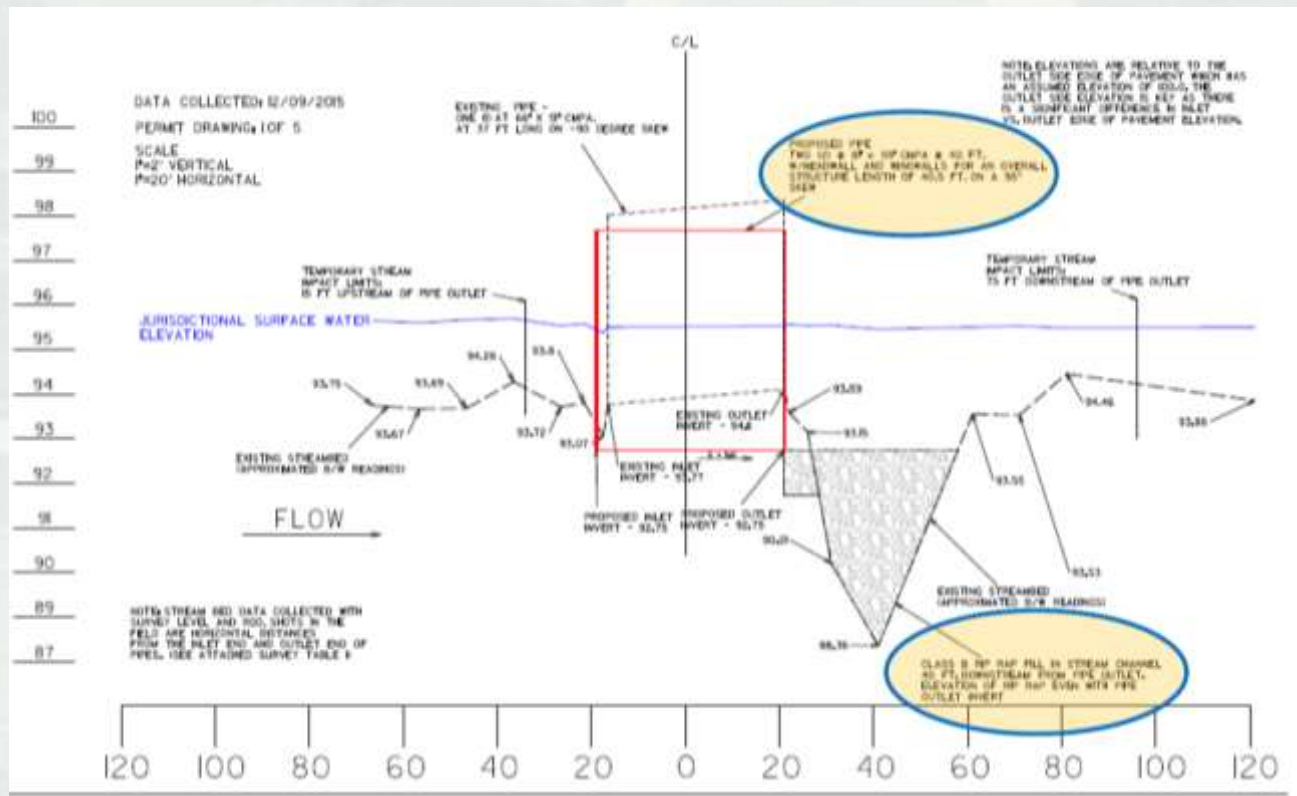
Project Plans



Project Plans



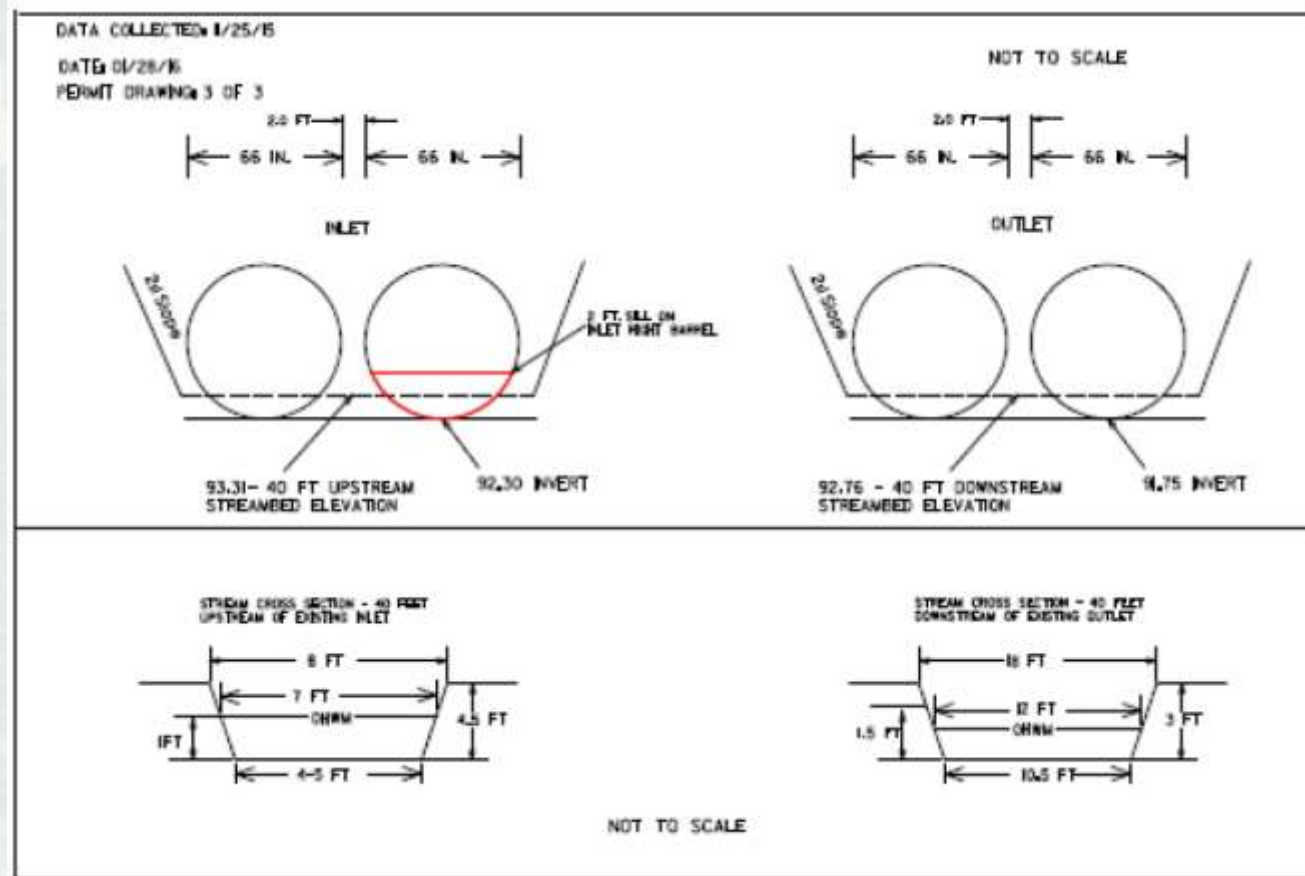
Project Plans





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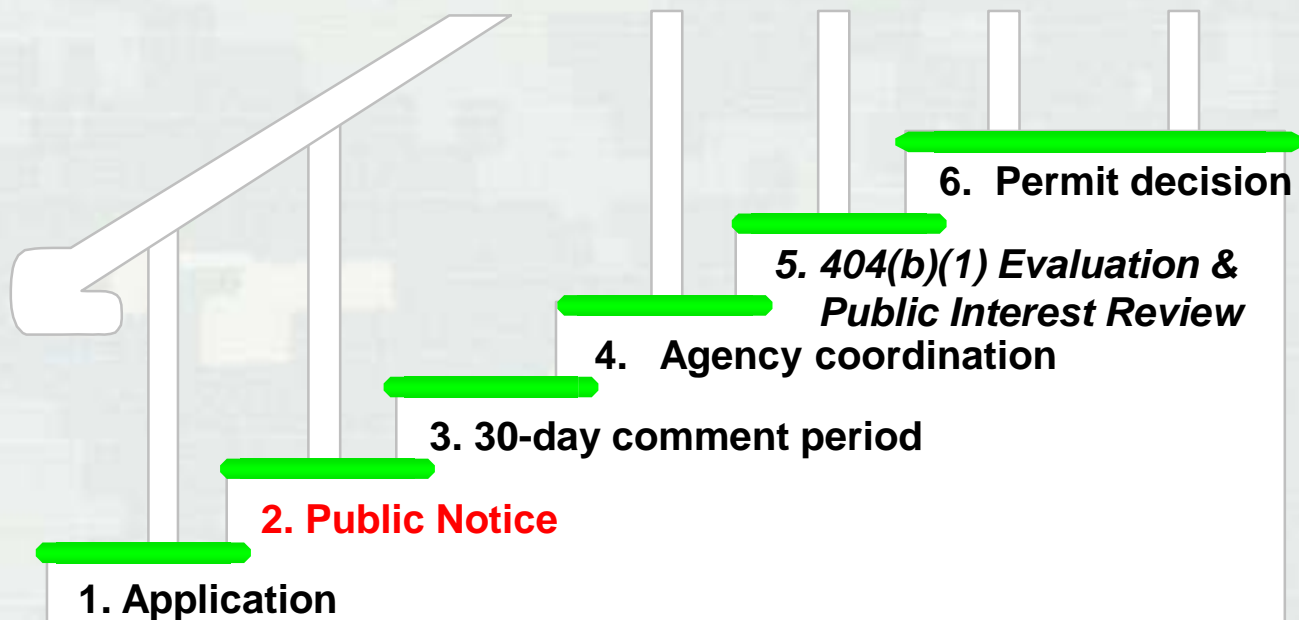
Project Plans





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PROCESSING APPLICATION





33 CFR 325



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“Complete Application”:

- ▶ Sufficient to go out on Public Notice (PN)
- ▶ PN: “Sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment.”



Additional Information to Process

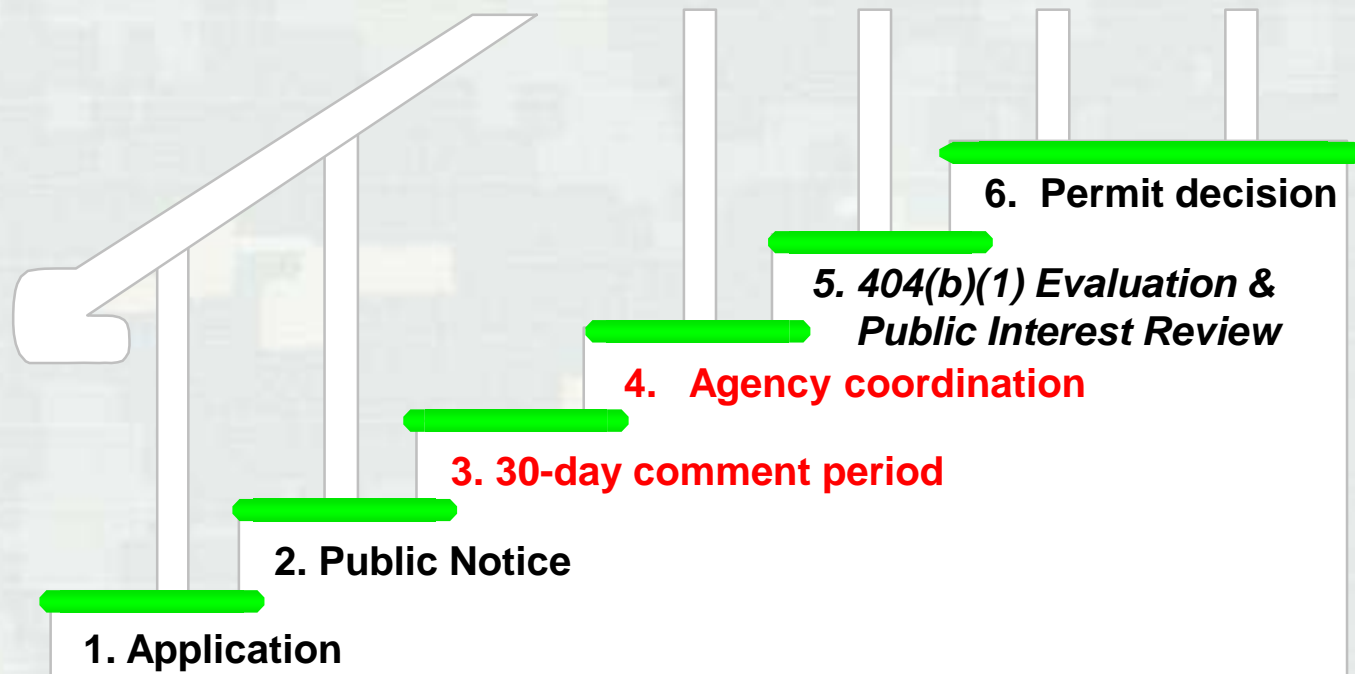
- ▶ **Public Interest Determination**
- ▶ **Comply with Section 404(b)(1)**





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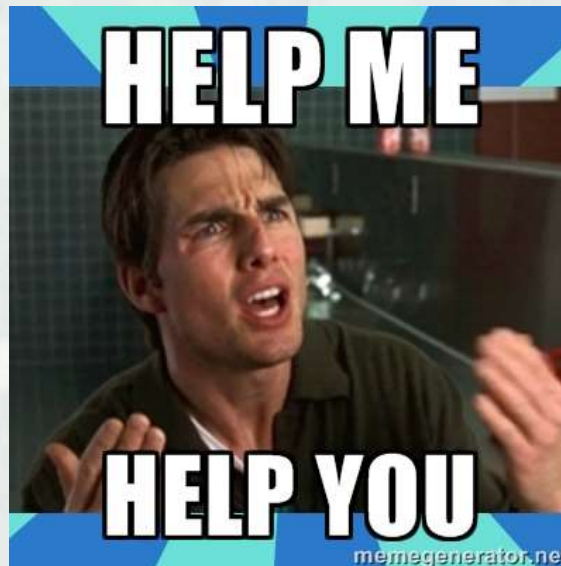
PROCESSING APPLICATION





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Provide supplement information UP FRONT!

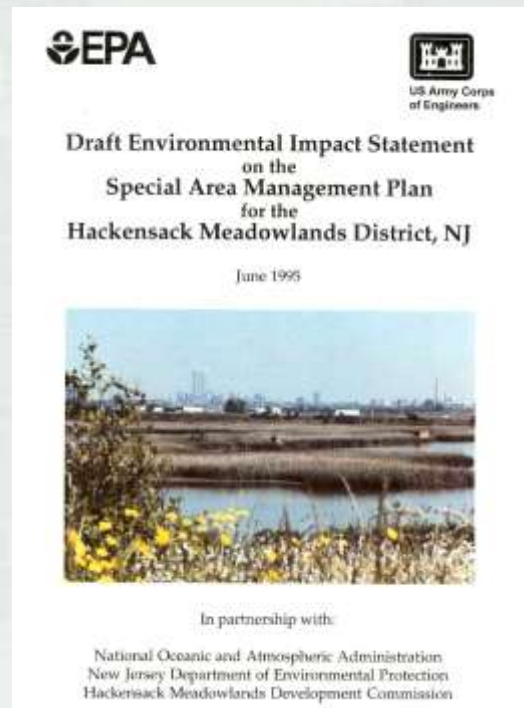


Don't wait until the PN period is over to submit additional info needed to process the permit.



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SUPPLEMENTAL INFORMATION



Existing environmental documents

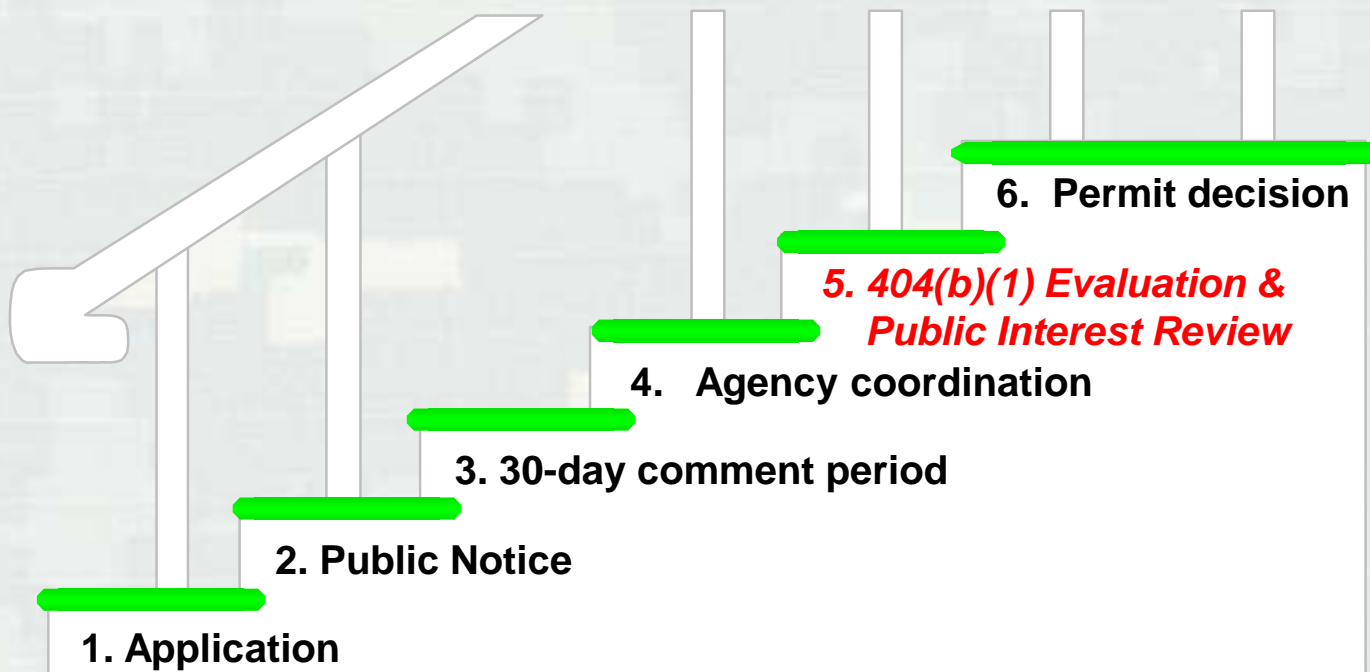


Site photos



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PROCESSING APPLICATION





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COMPLIANCE WITH SECTION 404(B)(1) GUIDELINES?

40 CFR PART 230

Mandatory criteria used for evaluating discharges of dredged/fill material into waters of the US

Corps can ONLY permit the LEDPA

Water Dependency Test:

- ▶ Corps defines basic project purpose-
 - Whether or not a project requires proximity or siting in special aquatic sites

If Project is not Water Dependent, a Less EDPA is presumed to exist

Potential LEDPA must be rejected if it would have other significant adverse environmental consequences



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CORPS' ENVIRONMENTAL ASSESSMENT (EA) 404(B)(1) ANALYSIS

Overall project purpose is used to evaluate less environmentally damaging practicable alternatives.

Corps defines overall project purpose





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SEQUENTIAL STEPS

SECTION 404 (B)1 GUIDELINES

- 1. Determine water dependency**
- 2. Consider off-site alternatives**
- 3. Avoid unnecessary on-site impacts**
- 4. Minimize unavoidable on-site impact**
- 5. Compensate for unavoidable on-site impacts (mitigation)**





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ALTERNATIVES ANALYSIS





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PREPARING ALTERNATIVES ANALYSIS

Step 1: Define Purpose and Need

Step 2: Identify Alternatives

Step 3: Describe and Analyze Alternatives for Practicability

Step 4: Identify the Least Environmentally Damaging Practicable Alternative



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STEP 1: DEFINE PURPOSE AND NEED

- Basic Project Purpose
- Overall Project Purpose
 - Defines the **Need**
 - Drives the **alternatives analysis**
 - Cannot be so specific it precludes other alternatives
 - Corps can modify



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EXAMPLE OF OVERALL PROJECT PURPOSE

Too Restrictive: To develop a 225-lot single-family residential development at the southeast intersection of Interstate 95 and Charleston Highway.

Too Broad: To develop a residential development in southeast South Carolina.

Just Right: To develop a single-family residential subdivision near Interstate 95 in St. George, South Carolina, to meet local demand for this type of housing.



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WHAT DO YOU THINK?



Example: To develop an industrial park at the northwest intersection of Main Street and Waterside Avenue in Saluda County



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STEP 2: IDENTIFY ALTERNATIVES

Describe alternatives that could meet overall project purpose

Must include:

- ▶ Applicant's preferred alternative
- ▶ Alternatives that would involve no impacts
 - May be the "No-Action" alternative
- ▶ Alternative offsite locations
- ▶ Alternative onsite locations

"Unreasonable" alternatives may not be unreasonable

Number of alternatives vary by project – HAVE to have at least 3 (preferred, No-Action, and alternate)



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OFF-SITE ALTERNATIVES



ON-SITE ALTERNATIVES





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REQUIRED ALTERNATIVES

NEPA

“No Action” alternative means the project is NOT implemented

Alternatives not available to applicant can be considered

404(b)(1)

Practicable alternative includes activities which do NOT involve a discharge of dredged or fill material into WOTUS

Compares only practicable alternatives



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Appropriate Costs

“The mere fact that an alternative may cost more does not necessarily mean it is not practicable.”

It is appropriate to look at costs as compared to other similar projects (see RGL 93-02).



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STEP 3: DESCRIBE AND ANALYZE ALTERNATIVES FOR PRACTICABILITY

Practicability means the alternative is

- ▶ Available and can be accomplished
- ▶ Able to achieve the overall project purpose
- ▶ Feasible considering cost, existing technology, and/or logistics

Evaluate onsite and offsite

Alternatives should clearly be listed and numbered and include at a **MINIMUM**:

- ▶ General site information
- ▶ The practicability of each alternative



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SUMMARY TABLE FOR PRACTICABILITY AND REASONABLENESS SCREENING SELECTION CRITERIA

Practicability / Reasonability Screening Selection Criteria	Alt 1, No Build/ Action	Alt 2, Applicant's Preferred	Alt 3	Alt 4	Alt 5, Total Avoidance
Capable of being done considering cost (Note: Must consider total cost, funding source, profit margin, etc.) Is the cost reasonable considering scope & type of project?	Y	Y	N	Y	N
Capable of being done considering existing technology (Note: Must consider site conditions, all available equipment & techniques, etc.)	Y	Y	Y	Y	Y
Capable of being done considering logistics (Note: Must consider existing infrastructure, traffic patterns, & topography.)	N	Y	N	Y	N
Property can be reasonably obtained (Note: Must consider availability, ability to condemn, leases, etc.)	N/A	Y	N	Y	N
Property can be reasonably expanded (Note: Must consider ability to acquire adjacent lands for expansion)	N/A	Y	N	Y	N
Property can be reasonably managed (Note: Must consider restrictions on management of the site)	N/A	Y	N	Y	N
Meets basic project purpose	N	Y	Y	Y	N
Meets overall project purpose	N	Y	N	Y	N
Practicable Site (Y or N)	N	Y	N	Y	N



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STEP 4: IDENTIFY THE LEDPA

LEDPA – Least Environmentally Damaging Practicable Alternative

Take each practicable alternative and identify the environmental impacts for each:

- ▶ Impacts (beneficial or adverse) to aquatic ecosystem
- ▶ Overall (beneficial or adverse) environmental impacts
- ▶ Be specific and quantitative



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STEP 4: IDENTIFY THE LEDPA

FACTORS	No Action Alternative	Applicant's Preferred	Alternative 1	Alternative 2
Environmental Factors				
Stream (Linear Feet)	0	0	0	0
Stream Quality (Low/Med/High)	N/A	N/A	N/A	N/A
Wetland (Acres)	0	2.0	6.0	4.0
Wetland Quality (Low/Med/High)	0	Low	High	Med
Impact to Cultural Resources	No	No	No	No
Impacts to Endangered Species	No	No	No	No
LEDPA	Does not meet project purpose or need	Yes	No	No

Guidelines **REQUIRE** that the LEDPA be selected



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MOST COMMON DEFICIENCIES

404(b)(1) written backwards

Project Purpose too restrictive/broad – (Step 1)

Number of alternatives – (Step 2)

No off-site alternatives/or impracticable alternatives– (Step 3)

No avoidance and minimization of on-site alternatives – (Step 3)



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Impact This



Avoid This





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PUBLIC INTEREST DETERMINATION





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Public Interest Factors

- Economics/Social
- Education/Scientific
- Aesthetics
- Food-Fiber Production
- Historic/Architectural/
Archaeological
- Recreation
- Land Use
- Mineral Resources
- Soil Conservation
- Water Supply
Conservation
- Water Quality
- Air Quality
- Noise Level
- Public Safety
- Energy Needs
- National Security
- Navigation
- Shoreline Erosion/
Accretion
- Flood Hazards and
Flood Plain
- Wetlands and
Streams
- Refuges
- Fish
- Wildlife
- Food Chain Organisms
- Shellfish Organisms
- Threatened and
Endangered Species
- General Environmental
Concerns
- Property Ownership
- Mineral Needs
- Sea Level Rise
- Other



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PUBLIC INTEREST DETERMINATION

Evaluation results: No Effect, Beneficial Effect, Negligible Effect, Adverse Effect, Neutral as Result of Mitigative Action

Consideration of both cumulative and secondary impacts

Used to determine whether or not project is in the public interest



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PROJECT EVALUATION CONTINUED

Compliance with other Laws

- ▶ ESA
- ▶ NHPA
- ▶ Consultation with Federally Recognized Tribes
- ▶ Magnuson-Stevens Fishery Conservation Management Act (Essential Fish Habitat)
- ▶ Section 401 Water Quality Certification
- ▶ Coastal Zone Management Act
- ▶ Clean Air Act



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DECISION TIME

Issue Permit

Issue Permit with Conditions

- ▶ Conditions must relate to Corps' responsibility
- ▶ Conditions must be enforceable

Deny Permit



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GROUNDS FOR DENIAL

- 1. Detrimental to the Public**
- 2. Not the Least Environmentally Damaging Practical Alternative (LEDPA)**
- 3. Significantly degrades the aquatic environment.**
- 4. Minimization measures not present.**
- 5. Nonexistence of sufficient information to make a reasonable judgment.**





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HELP ME HELP YOU



Pre-Application
Clearly Document
Documentation Up Front



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IMPORTANT NUMBERS/WEBSITE

- Regulatory Division Web Site
<http://www.sac.usace.army.mil/Missions/Regulatory/>
- Charleston Office
 - Phone 843.329.8044
- Conway Office
 - Phone 843.365.4239
- Columbia Office
 - Phone 803.253.3444



Questions???